

HOUSE BILL 3530  
By Harwell

AN ACT to amend Tennessee Code Annotated, Title 17,  
Chapter 4, relative to judicial selection and  
evaluation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 17-4-101, is amended by deleting the section in its entirety, and by substituting instead the following language:

(a) It is the declared purpose and intent of the general assembly by the passage of this chapter to assist the governor in finding and appointing the best qualified persons available for service on the appellate and trial courts of Tennessee, to assist the electorate of Tennessee to elect the best qualified persons to the courts; to insulate the appellate judges of the courts from the influence and pressure of political campaigns; to improve the administration of justice; to enhance the prestige of and respect for the courts by eliminating the necessity of political activities by appellate justices and judges; to make the process of selecting appellate and trial judges open to lawyers of all backgrounds, regardless of sex, ethnicity and political party identification; to build the public trust in the commission created hereunder; to make the judicial function "nonpolitical" by minimizing the possibility that judicial decisions would be made in anticipation of a future election campaign; and to foster judicial independence.

(b) The organizations authorized in this chapter to make nominations for members of the judicial selection commission are associations composed of lawyers who represent a variety of areas of law practice, and from experience and observation are intended to be familiar with the best qualifications and characteristics of judges.

(c) It is the declared purpose and intent of the general assembly that the individuals nominated by the judicial selection commission to be appellate and trial judges shall not be required to be engaged in a jury trial practice. The general assembly recognizes that individuals may be fully qualified to be appellate or trial judges who do not have a jury trial practice. It is the public policy of this state that all areas of law practice should be represented on both the appellate and trial benches. Therefore, the judicial selection commission shall not exclude an applicant for a judgeship on the ground that that person does not engage in jury trials.

(d) "Geography" wherever it is used in this chapter, refers to the three (3) grand divisions of the state, and to geography within a grand division, so that not everyone from a particular grand division comes from a major population center within that grand division.

SECTION 2. Tennessee Code Annotated, Section 17-4-102, is amended by deleting subsections (a), (b), (c), and (d) in their entirety, and by substituting instead the following language:

(a) There is established as a part of the judicial branch of the state a judicial selection commission to be composed of twenty-one (21) members as follows:

(1) Four (4) members with each grand division of the state being represented, and two (2) being from each political party, from lists of nominees submitted by the Tennessee bar association, and one (1) member from a list of nominees submitted by the Tennessee defense lawyers association. The nominees submitted by the Tennessee bar association shall not include attorneys whose principal practice area is either plaintiff's personal injury work or criminal defense;

(2) Three (3) members with one (1) member from each of the state's grand divisions from lists of nominees submitted by the Tennessee trial lawyers association, at least one (1) of whom shall be from a different political party than the other two (2);

(3) Three (3) members with one (1) member from each of the state's grand divisions from lists of nominees submitted by the Tennessee district attorneys general conference, at least one (1) of whom shall be from a different political party than the other two (2);

(4) Three (3) members with one (1) member from each of the state's grand divisions from lists of nominees submitted by the Tennessee association of criminal defense lawyers, at least one (1) of whom shall be from a different political party than the other two (2);

(5) Two (2) members, from different grand divisions, from lists of nominees submitted by the Tennessee lawyers' association for women, who shall be from different political parties;

(6) Three (3) members who shall not be lawyers, at least one (1) of whom shall be from a different political party than the other two (2); and

(7) Two (2) members who shall be lawyers but who shall not be nominated by a group. Prior to making such appointments, the speakers shall consult with each other and shall attempt to achieve a balance between the two (2) appointees' primary areas of law practice, and the two (2) shall be from different political parties.

(b)

(1)

(A) The speaker of the senate shall appoint two (2) members from the lists of nominees submitted by the Tennessee bar association, three (3) members from the list of nominees submitted by the Tennessee trial lawyers

association, three (3) members from the lists of nominees submitted by the district attorneys general conference, one (1) of the nonlawyer members, one (1) of the members from the list of nominees submitted by the Tennessee lawyers' association for women, and one (1) of the lawyer members not nominated by a group.

(B) The speaker of the house of representatives shall appoint two (2) members from the lists of nominees submitted by the Tennessee bar association and one (1) member from the list of nominees submitted by the Tennessee defense lawyers association, three (3) members from the lists of nominees submitted by the Tennessee association of criminal defense lawyers, two (2) of the nonlawyer members, one (1) of the members from the list of nominees submitted by the Tennessee lawyers' association for women, and one (1) of the lawyer members not nominated by a group.

(C) The members appointed by the speaker of the senate shall be subject to confirmation by the senate, and the members appointed by the speaker of the house of representatives shall be subject to confirmation by the house.

(2) If the nominees do not reflect the diversity of the state's population, including sex, ethnicity (including the dominant ethnic minority population), political affiliation and geography, the speaker shall reject the entire list of a group and require the group to resubmit its list of nominees.

(3) Each speaker, in making the appointments to the judicial selection commission, shall appoint persons who approximate the population of the state with respect to such areas as sex, ethnicity (including the dominant ethnic minority population), and political affiliation.

(c) Each group authorized to submit lists of nominees shall submit three (3) nominees for each position specifically designated pursuant to subsection (a) to be filled from lists submitted by that group. Each list of nominees shall include background data and a complete statement of the nominee's professional experience.

(d) Each group and each speaker in making lists of nominees and appointments respectively shall do so with a conscious intention of selecting a body which reflects a diverse mixture in such areas as sex, ethnicity (including the dominant ethnic minority population), and political affiliation. The speakers shall make their appointments in such a way that any imbalance in the lists of nominees, or in the current composition on the commission, is eliminated by the composition of the commission after new appointments are made.

SECTION 3. Tennessee Code Annotated, Section 17-4-106, is amended by adding the following language as a new subsection (d):

(d) Notwithstanding subsections (b) and (c) of this section, if the commission does not reflect the diversity of the state's population, including sex, ethnicity (including the dominant ethnic minority population), political affiliation and geography, the speaker shall replace existing members whose terms are expiring in an effort to achieve such diversity.

SECTION 4. Tennessee Code Annotated, Section 17-4-107, is amended by adding the following language at the end of the section:

If the commission does not reflect the diversity of the state's population, including sex, ethnicity (including the dominant ethnic minority population), political affiliation and geography, the speaker shall fill the vacancy in such a manner as to achieve such diversity.

SECTION 5. Tennessee Code Annotated, Section 17-4-201(b), is amended by deleting the subsection in its entirety, and by substituting instead the following language:

(b)

(1) The judicial evaluation commission shall be composed of fourteen (14) members.

(2) The judicial council shall appoint six (6) of the members, of whom four (4) shall be state court judges and two (2) shall be nonlawyers.

(3) The speaker of the senate shall appoint one (1) member from a list of three (3) nominees submitted by the Tennessee bar association, one (1) member from a list of three (3) nominees submitted by the Tennessee trial lawyers association, one (1) member from a list of three (3) nominees submitted by the district attorneys general conference and one (1) nonlawyer member. Each list of nominees shall include one (1) person having a political affiliation different from the other two (2).

(4) The speaker of the house of representatives shall appoint two (2) members from a list of six (6) nominees submitted by the Tennessee bar association, one (1) member from a list of three (3) nominees submitted by the Tennessee association of criminal defense lawyers and one (1) nonlawyer member. The list of nominees submitted by the Tennessee bar association shall include at least two (2) persons having a political affiliation different from the others listed. The list of nominees submitted by the Tennessee association of criminal defense lawyers shall include one (1) person having a political affiliation different from the other two (2).

(5) The nominees of the Tennessee bar association shall be individuals whose practice areas are different from those nominated by the Tennessee trial lawyers association, the district attorneys general conference and the Tennessee association of criminal defense lawyers.

(6) Each group in making lists of nominees shall do so with a conscious intention of nominating individuals who reflect a diverse mixture with respect to sex, ethnicity (including the dominant ethnic minority population), political affiliation and geography. Each appointing authority shall assure that the judicial evaluation commission as constituted reflects the required diversity as to sex, ethnicity (including the dominant ethnic minority population), political affiliation and geography.

(7) The supreme court's evaluation procedure may permit the judicial evaluation commission to perform an evaluation with less than the full membership in panels, but the full commission shall approve the evaluation.

(8) In keeping with the intent of this chapter as expressed in §17-4-101 concerning the diversity of the judicial selection commission, the appointing authorities and each nominating group for the judicial evaluation commission shall endeavor to make appointments and submit nominees respectively that approximate the population of the state with respect to race, sex and political affiliation.

(9) To stagger the terms of judicial evaluation commission members, beginning September 1, 1999, the four (4) nonlawyer members on the commission shall serve six-year transition terms; the four (4) state court judges on the commission shall serve four-year transition terms; and the four (4) lawyer members on the commission shall serve two year transition terms. At the conclusion of the transition terms, each regular term of a commission member shall be six (6) years. A vacancy on the commission shall be filled in the same manner as the original appointment for the remainder of the unexpired term. If the commission does not reflect the diversity of the state's population, including sex, ethnicity (including the dominant ethnic minority population), political affiliation and geography, the appointing authority shall fill the vacancy in such a manner as to achieve such diversity.

(10) No commission member shall serve more than two (2) terms. However, if the commission does not reflect the diversity of the state's population, including sex, ethnicity (including the dominant ethnic minority population), political affiliation and geography, the appointing authority shall replace existing members whose terms are expiring in such a manner as to achieve such diversity.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.